

REMARKS

Applicant requests reconsideration and further examination of the above-identified application in view of the arguments and amendments made to the claims. The following remarks state Applicant's bases for making this request and are organized according to the Examiner's Action.

Applicant notes and appreciates that Claims 3-7 and 11-14 comprise allowable subject matter.

CLAIM OBJECTIONS

The Examiner states that Claims 1, 3-7, 9, and 11-14 are objected to because of the following informalities: the citation "at the ends" does not have antecedent basis.

Applicant has deleted the phrase "at the ends" in claim 1 and claim 9 which are the claims where the phrase appeared. Therefore, the Examiner's objection has been corrected.

CLAIMS REJECTIONS - 35 U.S.C. § 112

The Examiner states that claims 1, 3-7, and 11-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The Examiner states that in regard to claim 1, the amended limitation "having retainer edges at the ends of the sides of said channel" is confusing and unclear. Applicant has amended claim 1 herein to delete the phrase "at the ends of the sides of" so that claim 1 now calls for "having retainer edges overlapping said channel on each side to partially enclose said channel". Applicant believes the additional words, which are underlined, makes claim 1 clear and definite, and claim 1 reads on Fig. 1.

The Examiner states that in claim 4, it is not clear that "a flange" cited in claim 4 is the same as "a flange" cited in claim 3. Applicant has amended claim 4 to be dependent on claim 3 instead of claim 1 and claim 4 now calls for

"said flange comprises a first section and a second section, said second section extending from said first section to form a right angle."

Applicant believes that claim 4, as amended, is now clear and definite.

The Examiner states that claims 5 and 6 have the same issues as claim 4. Applicant has amended claim 5 to be dependent on claim 3 instead of claim 1, and "said panel" is deleted and replaced with -- said channel --. Similarly, Applicant has amended claim 6 to be dependent on claim 3 instead of claim 1 and "said panel" is deleted and replaced with -- said channel --. Applicant believes that claims 5 and 6, as amended, are now clear and definite.

The Examiner states that in regard to claim 9, the amended limitation "retainer edges at the ends of the sides of said first channel and said second channel" is confusing and

unclear. Applicant has amended claim 9 to now call for

"each of said first channel and said second channel comprises retainer edges overlapping said first channel and said second channel on each side to partially enclose said first channel and said second channel;"

Applicant believes that claim 9, as amended, is now clear and definite.

Therefore, Applicant believes that claims 1, 4, 5, 6 and 9, as amended, are now clear and definite and that they are patentable, including dependent claim 7 and claims 11-14.

CLAIMS REJECTIONS - 35 U.S.C. § 102

The Examiner states that claims 1 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Kay (US 4,704,839). The Examiner states that regarding claim 1, Kay teaches a panel of thermal barrier extrusion 150 comprising at least one channel C (See Fig. 8 in Kay) positioned on a side of the panel having retainer edges E on each side of the channel C, said channel extending the length of the panel 150. However, Applicant has amended claim 1 to more particularly point and distinctly claim the subject matter of the present invention. Claim 1 now calls for:

"A panel for framing an opening of a building to eliminate air and water penetration comprising:

at least one channel positioned on a side of said panel having retainer edges overlapping said channel on each side to partially enclose said channel, said channel extending the length of said panel."

Applicant points out that in Fig. 8 of Kay the auxiliary fin structures 154 and 156 (also referred to by the examiner as "retainer edges" in his mark-up of Fig. 8 by the reference character "E") do not overlap the channel "C" (space between fin structure 154); therefore, Kay does not disclose a critical element of the present invention, i.e., the retainer edges 22, 24, 28, 30 which enables a flange 12, 14, or 16 to be retained within the panel 10. Hence, Kay does not disclose all the elements of the present invention as recited in claim 1 (as amended) so claim 1 is not anticipated by Kay.

The Examiner states that regarding claim 9, Kay teaches a panel of thermal barrier extrusion 150 comprising a first side of the panel 150 having a first channel C (see Examiner's mark-up of Kay's Fig. 8) (copy attached), and a second channel B, said second channel being adjacent to the first channel, and the first channel and the second channel extending the length of the panel, each of said first channel and said second channel comprises retainer edge E on each side of channels C, respectively,....

However, Applicant has amended claim 9 to more particularly point and distinctly claim the subject matter of the present invention. Claim 9 now calls for:

"each of said first channel and said second channel comprises retainer edges overlapping said first channel and said second channel on each side to partially enclose said first channel and said second channel;"

As described above for the similar amendment to claim 1, the retainer edges "E" in Kay (see the Examiner's marked-up version of Kay's Fig. 8) do not overlap each of the channels C on each side to partially enclose each channel C as shown in Fig. 1 of the present invention. In Fig. 1 retainer edges 22, 24 overlap channel 20 and this overlap is what retains one of the flanges (12, 14, 16) within the channel. Kay does not disclose such retainer edges 22, 24, 28, 30 which are critical elements of the present invention. Therefore, Kay does not disclose all the elements of the present invention as recited in claim 9 (as amended), so claim 9 is not anticipated by Kay.

The Examiner states that in regard to claims 2 and 10, each of the channels 150 and 154 is inherently having retainer edges one on each side. However, Applicant had cancelled claims 2 and 10 in the amendment mailed to the USPTO on December 1, 2004. The "retainer edges" limitation of claims 2 and 10 was added to claims 1 and 9 respectively by amendment.

Therefore, Applicant believes that claims 1 and 9, as amended, are not anticipated by Kay (US 4,704,839) and that they are now patentable.

Allowable Subject Matter

The Examiner states that claims 3-7 and 11-14 are objected to as being dependent upon a base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant has amended claim 3 and claim 11 to include the limitations of claim 1 and claim 9, respectively, to overcome the Examiner's objections and rejections under 35 U.S.C. 112 as discussed above.

Therefore, Applicant believes that claim 3 is now allowable along with dependent claims 4-7, and that claim 11 is now allowable along with dependent claims 12-14.

In view of the above, Applicant believes that claims 1, 3-7, 9 and 11-14, as amended, are now in condition for allowance. Reconsideration of the objections and rejections is respectfully requested. Accordingly, it is requested that claims 1, 3-7, 9 and 11-14 be allowed and the case be sent to issue.

Please charge any costs in connection with this document to our Deposit Account No. 16-0875.

Respectfully submitted,
PEARSON & PEARSON, LLP
BY



WALTER F. DAWSON
PATENT ATTORNEY
10 George Street
Lowell, Massachusetts 01852
(978) 452-1971
Reg. No. 30,046

Data\Blundo\32978\PTO\Amend-1.116-Supp.RespTo12-28-05 OA